

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 01-0282P
Gross and Adjusted Gross Income Tax
Calendar Years 1992, 1993, 1994, and 1995**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer has an ownership interest in an Indiana domiciled partnership and is a holding company whose sole asset and activity is the partnership interest. Taxpayer failed to file income tax returns. In 1996, the Taxpayer was merged into the parent company.

The auditor found that the taxpayer had distributive shares of partnership income subject to Gross and Adjusted Gross Income in all years of the audit.

Taxpayer filed a penalty protest letter dated October 17, 2001.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed, states it is a Delaware Corporation with a commercial domicile entirely in Illinois, and was a wholly owned subsidiary of its parent company. Taxpayer states that its taxable income was included in the Illinois unitary filing of its parent. The parent is responsible for the state income tax filing of its own tax liability as well as that of its subsidiaries. It was an unintentional oversight that the income tax filing of the taxpayer was treated as 100% Illinois. Taxpayer requests an abatement of the penalty. Taxpayer further states that it did not intentionally disregard the tax regulations but that the error was merely an oversight as to the proper filing jurisdiction.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use

such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer failed to file Indiana tax returns when it consisted of an Indiana domiciled partnership. A nonfiler is subject to a negligence penalty that the department finds proper. Taxpayer has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer's protest is denied.